

FILED
BILLINGS, MT

IN THE UNITED STATES DISTRICT COURT 2006 MAR 15 AM 9 01

FOR THE DISTRICT OF MONTANA

PATRICK E. DUFFY, CLERK

BY

DEPUTY CLERK

BILLINGS DIVISION

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|--------------------------------|---|-----------------------------|
| PHILLIP ALLEN WING, |) | Cause No. CV 05-99-BLG-RWA |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | FINDINGS AND RECOMMENDATION |
| |) | OF U.S. MAGISTRATE JUDGE |
| YELLOWSTONE COUNTY DETENTION |) | |
| FACILITY; CHUCK MAXWELL, |) | |
| SHERIFF, YELLOWSTONE COUNTY |) | |
| DETENTION FACILITY; LT. (FIRST |) | |
| NAME UNKNOWN) NEITS; NURSE |) | |
| (FIRST NAME UNKNOWN) KYDLAND; |) | |
| NURSE (FIRST NAME UNKNOWN) |) | |
| MICHAELS; NURSE (FIRST NAME |) | |
| UNKNOWN) STEELE; NURSE (FIRST |) | |
| NAME UNKNOWN) DOUGHTERY; NURSE |) | |
| (FIRST NAME UNKNOWN) PACHECKO; |) | |
| NURSE (FIRST NAME UNKNOWN) |) | |
| OWEN; and JOHN DOE #1, |) | |
| |) | |
| Defendants. |) | |

On August 9, 2005, Plaintiff Phillip Allen Wing applied to proceed *in forma pauperis* with this action under 42 U.S.C. § 1983. That Application was granted in a separate order. Wing is a state prisoner proceeding *pro se*.

On January 5, 2006, the Court gave Wing an opportunity to amend his Complaint to avoid dismissal. The Order was returned by

FINDINGS AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE / PAGE 1

the Yellowstone County Detention Facility, which was Wing's last known address of record. The Clerk then sent the Order to the Billings Probation and Parole Office, 2615 4th Ave. S, Billings, MT 59107. See CON Network, <http://app.mt.gov> (last visited Mar. 10, 2006). The Order was not returned, but Wing failed to respond to it.

D. Mont. L.R. 5.5(b) provides that an action may be dismissed if mail directed to a party at his last address of record is returned and if the Court does not receive notice from the party within sixty days thereafter of a current address for service.

More than sixty days have passed since Wing's mail was returned. The Court has no way of knowing whether he received the Order of January 5, 2006. It is clear, however, that Wing is no longer at the Yellowstone County Detention Facility and that he failed to inform the Court of that fact. Wing is a very experienced *pro se* litigant who well knows that he must keep the Court informed of his mailing address. See, e.g., Findings and Recommendation (doc. 58) at 11, *Wing v. Department of Corrections*, No. CV 02-43-H-DWM(CSO) (D. Mont. Oct. 18, 2005). The action should be dismissed.

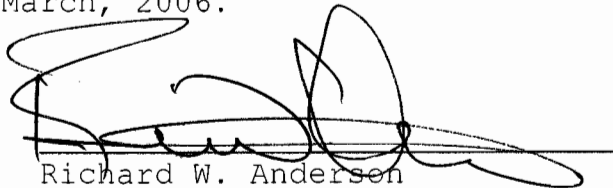
RECOMMENDATION

Based on the foregoing, the undersigned United States Magistrate Judge **RECOMMENDS** that Wing's Complaint be DISMISSED for failure to notify the Court of his current mailing address.

The Clerk of Court shall serve a copy of the Findings and Recommendation of the United States Magistrate Judge upon the Plaintiff. Plaintiff is advised that, pursuant to 28 U.S.C. § 636, any objections to these findings must be filed or delivered to prison authorities for mailing within twenty (20) calendar days after the entry date reflected on the Notice of Electronic Filing, or objection is waived.

Wing must immediately inform the Court of any change in his address. Failure to do so may result in dismissal of the case without notice to him.

DATED this 15th day of March, 2006.



Richard W. Anderson
United States Magistrate Judge